

**Exhibit 2**

ET 347218600 US

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARKS TRIAL AND APPEAL BOARD

-----X  
HLR Technology Corporation, :  
: Opposer, :  
: v. :  
Jay Mullins d/b/a ZPRO, :  
: Applicant. :  
-----X

Opposition No. 122,735



04-23-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #66

**MOTION TO COMPEL**

Opposer, HLR Technology Corporation, by its attorneys, respectfully request that Applicant, Jay Mullins d/b/a ZPRO be ordered to respond to Opposer's First Set of Interrogatories ("Interrogatories") and First Request for Production of Documents ("Document Requests") by serving written answers to said Interrogatories and things called for in the Document Requests. The salient facts supporting this motion are set forth in the accompanying affidavit of Bert A. Collison.

TRADEMARK TRIAL AND  
APPEAL BOARD  
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Rule 33(b)(3) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P.") provides that a party upon whom interrogatories have been served shall serve its answers, and/or objections "within 30 days after service of the interrogatories." Under Rule 34(b), Fed.R.Civ.P., a party served with a document request "shall serve a written response within 30 days after the service of the request." There is no dispute that Applicant has never served a written response to either Opposer's Interrogatories or Document Requests, nor did Applicant respond by objecting to such Interrogatories and Document Requests or moving for a Protective Order. See Rules 33 and 34,

S.P.

Fed.R.Civ.P. Applicant has also failed to respond by either producing or allowing inspection and copying of responsive documents and things under Rules 33(d) or 34 (b), Fed.R.Civ.P.

Pursuant to Rule 37 (a)(2) (B), Fed.R.Civ.P., and 37 C.F.R. 120 (e), Opposer requests an order compelling Applicant to serve written answers to Opposer's Interrogatories and Document Requests and to produce or permit the inspection and copying of all documents and things that are responsive to Opposer's Document Requests. T.B.M.P. § 415.01. Such order should also provide that, in the event Applicant should fail to respond to Opposer's discovery requests, the Board will dismiss with prejudice the application of Applicant to register the claimed mark XICAL as an appropriate sanction for non-compliance. Johnson & Johnson v. Diamond Medical, Inc., 183 U.S.P.Q. 615, 616 (T.T.A.B. 1974).

WHEREFORE, Opposer requests an order to compel Applicant to serve proper written responses to both Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents and to produce to Opposer at the offices of Opposer's attorney all documents and things called for in Opposer's First Request for Production of Documents.

Respectfully submitted,

Duane Morris LLP  
Attorneys for Opposer

Dated: New York, New York  
April 20, 2002

By: Bert A. Collison  
Bert A. Collison

380 Lexington Avenue  
New York, New York 10168  
(212) 692-1000

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion to Compel was deposited with the United States United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant's attorney, Robert G. Lev, Intellectual Property Consulting, 4766 Michigan Boulevard, Youngstown, Ohio 44505, on April 22, 2002

Duane Morris

By: Sheila Donnelly  
Sheila Donnelly

CERTIFICATE OF EXPRESS MAIL

Express Mail mailing number: ET347218600 US

Date of Deposit: April 22, 2002

I hereby certify that the foregoing Motion to Compel is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" under 37 C.F.R. 1. 10 on the date indicated above and is addressed to Commissioner of Trademarks, Box TTAB, NO FEE, 2900 Crystal Drive, Arlington Virginia 22202-3513.

Duane Morris LLP

By: Sheila Donnelly  
Sheila Donnelly

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 75/929,990  
Published in the Official Gazette of December 26, 2000

-----X  
HLR TECHNOLOGY CORPORATION, :  
:   
Opposer, :   
:   
v. :   
:   
JAY MULLINS DBA ZPRO, :   
:   
Applicant. :   
-----X

Opposition No. 122,735

CHANGE OF ADDRESS FOR OPPOSER'S COUNSEL

PLEASE TAKE NOTICE that the attorney for Opposer, Bert A. Collison, has become Of  
Counsel to the law firm of Duane Morris LLP.

PLEASE TAKE FURTHER NOTICE, that Opposer respectfully request that henceforth  
all pleadings, notices, motions, orders, briefs and any other correspondence or process relating to  
this case be mailed to him at the following address:

Bert A. Collison, Esq.  
Duane Morris LLP  
380 Lexington Avenue  
New York, New York 10168  
Tel. (212) 692-1017  
FAX (212) 692-1021

Dated: New York, New York  
April 22, 2002

Duane Morris LLP  
Attorneys for Opposer

By: Bert Collison  
Bert A. Collison  
380 Lexington Avenue  
New York, New York 10168  
(212) 692-1011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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HLR Technology Corporation,	:	
	:	
Opposer,	:	Opposition No. 122,735
	:	
v.	:	
	:	
Jay Mullins d/b/a ZPRO,	:	
	:	
Applicant.	:	
	:	
-----	X	

MOTION TO EXTEND PERIOD FOR TRIAL TESTIMONY

Opposer, HLR Technology Corporation, hereby moves the Honorable Trademark Trial and Appeal Board pursuant to Rule 2.117 of the Trademark Rules of Practice for an order extending the period for trial testimony in the above-identified opposition.

The grounds for this motion are that Opposer has filed a Motion to Compel Applicant to respond to Opposer's First Set of Interrogatories and First Request for Production of Documents by serving written answers to said Interrogatories and things called for in the Document Requests. Under the present schedule, Opposer's trial dates commence on April 24, 2002 and close on May 24, 2002. Since Applicant has not cooperated with Opposer, Opposer would not be able to proceed with the instant proceeding until a decision is reached on its Motion to Compel.

To avoid any prejudice to Opposer caused by the need to file the Motion to Compel, Opposer requests that the dates for Opposer's Trial testimony be rest pending Applicant's

response to the Motion to Compel or applicant's answers to discovery requests or notice from Opposer that no such answers had been received.

Dated: April 22, 2002

Respectfully submitted,

Duane Morris LLP  
Attorneys for Opposer

By: Bert Collison  
Bert A. Collison  
380 Lexington Avenue  
New York, New York 10168

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion to Suspend Opposition Proceedings was deposited with the United States United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant's attorney, Robert G. Lev, Intellectual Property Consulting, 4766 Michigan Boulevard, Youngstown, Ohio 44505, on April 22, 2002

Duane Morris

By: 

Sheila Donnelly

CERTIFICATE OF EXPRESS MAIL

Express Mail mailing number: ET 347218600u5

Date of Deposit: April 22, 2002

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Duane Morris LLP

By: 

Sheila Donnelly

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HLR Technology Corporation,	:	
	:	Opposition No. 122,735
Opposer,	:	
	:	AFFIDAVIT
v.	:	
	:	
Jay Mullins d/b/a ZPRO,	:	
	:	
Applicant.	:	
	:	
	X	

State of Maryland           )  
                                       )  
County of Talbot          ) ss.:

**Bert A. Collison, being duly sworn, deposes and says:**

1. As of April 1, 2002, I became Of Counsel to the firm of Duane Morris LLP, 380 Lexington Avenue, New York, New York 10168. Prior to April 1, 2002 I was Of Counsel to the firm of Nims, Howes, Collison, Hansen & Lackert, attorneys for Opposer herein. HLR Technology Corporation and I am knowledgeable with respect to this opposition proceeding and the matters alleged herein.

2. I offer this affidavit in support of Opposer's Motion to Compel discovery.

3. On November 26, 2001, Opposer served Opposer's First Set of Interrogatories (hereinafter "Interrogations"), First Request for Production of Documents (hereafter "Document Requests") upon Robert G. Lev, Esq., Intellectual Property Consulting, 4766 Michigan Boulevard, Youngstown, Ohio 44505, attorney for applicant, by first class mail. Copies of Opposer's Interrogatories and Document Requests are annexed hereto as Exhibits A and B



respectively. Applicant's responses to the aforesaid discovery requests were due on or before December 31, 2001.

4. Not having received any response either to the Interrogatories or the Document Requests by December 31, 2001, I telephoned Mr. Lev, Applicant's attorney, on January 7, 2001 pursuant to Trademark Rules of Practice Section 2.121(e) to ask the status of the responses to the outstanding discovery. Mr. Lev advised me that he had sent the Interrogatories and the Document Requests to his client, the Applicant, and had not received any response from him.

5. In a good faith effort to resolve this matter as required by Section 2.12(e), I advised Mr. Lev that in the event his client intends to respond, I would agree to extend the time to respond and would file a motion to extend the trial dates. I asked Mr. Lev to contact his client and advise me of his decision. I confirmed my telephone discussion with Mr. Lev by letter on January 8, 2002. A copy of this letter is attached as Exhibit C. A copy of the Motion to Extend Applicant's Time to Respond to Discovery to January 30, 2002 and Trial Date is attached as Exhibit D.

6. I received a letter from Mr. Lev dated January 22, 2002 advising that his client had advised him that he needed three (3) more weeks to produce all the documents requested. A copy of that letter is attached as Exhibit E. I responded to Mr. Lev on January 30, 2002 that I would file a Motion to Extend the Time to Respond to Discovery until March 1, 2002. A copy of my letter is attached as Exhibit F. A copy of the Motion to Extend Applicant's Time to Respond to Discovery is attached hereto as Exhibit G.

7. On March 21, 2002, I wrote Mr. Lev and advised him that if I did not have the response to the discovery by March 31, 2002, I would file a Motion to Compel. A copy of this letter is enclosed as Exhibit H.

8. Opposer has never received any written responses from Applicant to Opposer's Interrogatories or the Document Requests.

9. As shown by Exhibits C through H attached hereto, Opposer has made a good faith effort pursuant to 37 CFR 2.120 (c) by requesting that Applicant answer Opposer's Interrogatories and Document Requests.

10. I respectfully request that the Board grant Opposer's Motion to Compel Applicant to (i) serve written answers to Opposer's First Set of Interrogatories and (ii) serve written answers to Opposer's First Request for Production of Documents and Things in the possession, custody and/or control of Applicant that are responsive to Opposer's Document Requests.

Bert A. Collison

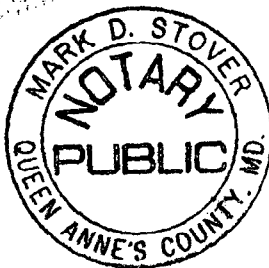
Bert A. Collison

Sworn to before me this  
20 day of April, 2002

Mark D. Stover

Notary Public

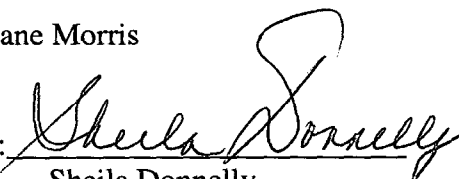
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CERTIFICATE OF SERVICE

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Duane Morris

By:   
Sheila Donnelly

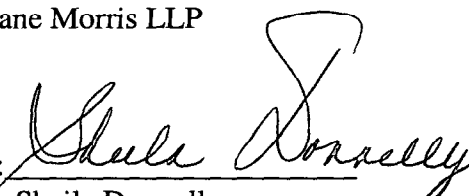
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